



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 4, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-1389

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116079.

The Texas Department of Health received a request for numerous types of information relating to the Spohn Kleberg Memorial Hospital in Kingsville. You state that you have released some of the requested information. You claim, however, the remaining information must be withheld under section 552.101. We have considered the exception you claim and have reviewed the documents you have submitted.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You argue that portions of the documents must be withheld as confidential medical records. We agree. Section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA"), applies to "[c]ommunications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient" and "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." The submissions to this office contain not only medical records and communications, but also information that

appears to have been obtained from those medical records and communications. Both are confidential and may be disclosed only in accordance with the MPA. See V.T.C.S. art. 4495b, § 5.08(a), (b), (c), (j); Open Records Decision No. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). We have marked the information that must be withheld under this statute.

You also argue that some of the requested records must be withheld because they are confidential emergency medical services communications. Health & Safety Code § 773.091. You have not, however, marked any information in the submitted documents that falls under the protection of this statute, nor are we able to identify any. We caution that records protected by this statute must, nonetheless, be withheld if they exist. Gov't Code § 552.352 (distribution of confidential information is a criminal offense).

Section 552.101 of the Government Code also encompasses common-law and constitutional privacy. Common-law privacy excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. See *id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. See Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common-law; the material must concern the "most intimate aspects of human affairs." See Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). We have marked in brackets the information that you must withhold based on a right of privacy.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive style with a vertical line at the end.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 116079

Enclosures: Submitted documents

cc: Mr. William R. Edwards
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(w/o enclosures)